163-677

TRANSCRIPT OF RECORD.

163-677

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1233. ~~163 677~~

THE BATE REFRIGERATING COMPANY, APPELLA[illegible]

vs.

DANIEL TOFFEY, GEORGE C. TOFFEY, AND GEORG[illegible] TOFFEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES [illegible] THE DISTRICT OF NEW JERSEY.

FILED JUNE [illegible], 1891.

the State of Minnesota in the case between the State of Minnesota, defendant in error, and Charles M. Basset, plaintiff in error, including also the original citation and proof of service thereof and original writ of error and assignments of error to the Supreme Court of the United States, and the same constitutes and is the full and complete return to the writ of error issued and allowed in said cause.

Seal of the Supreme Court, State of Minnesota.

Witness my hand and seal of said supreme court, at the capitol, in the city of St. Paul, this 21st day of June, A. D. 1892.

C. P. HOLCOMB, *Clerk.*

Endorsed on cover: Case No. 15,066. Minnesota supreme court. Term No., 1096. Charles M. Bassett, plaintiff in error, *vs.* The State of Minnesota. Filed June 27th, 1892.

163-677.

TRANSCRIPT OF RECORD.

163-677

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. ~~1233~~. ~~203~~ ~~221~~ ~~205~~ 28

28

THE BATE REFRIGERATING COMPANY, APPELLANT,

vs.

DANIEL TOFFEY, GEORGE C. TOFFEY, AND GEORGE A. TOFFEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED JUNE 29, 1891.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 1233.

THE BATE REFRIGERATING COMPANY, APPELLANT,

vs.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 15, 1891.

1 By the Honorable M. W. Acheson, one of the judges of the circuit court of the United States for the third circuit and district of New Jersey.

UNITED STATES OF AMERICA, *District of New Jersey,* } ss:

Whereas the Bate Refrigerating Company has lately appealed to the Supreme Court of the United States from a final decree rendered in the circuit court of the United States for the district of New Jersey on the 23rd day of April, 1891, and made in favor of you, the said Daniel Toffey, George C. Toffey, and George A. Toffey, and the filing of security required by law having been waived by consent—

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, in the District of Columbia, on Monday, the 29th day of June, 1891, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Trenton and State of New Jersey, in the third circuit, on the 5th day of June, 1891.

M. W. ACHESON,
Circuit Judge.

Due and timely service of the foregoing citation is hereby admitted.

June 8th, 1891.

LIVINGSTON GIFFORD,
Solicitor for Defendants and Appellees.

2 United States Circuit Court, District of New Jersey. In Equity.

BATE REFRIGERATING COMPANY, Complainant, *vs.* DANIEL TOFFEY, GEORGE A. TOFFEY, and GEORGE C. TOFFEY, Defendants. } Concerning U. S. Letters Patent No. 197,314.

The above-named complainant, conceiving itself aggrieved by the final decree entered herein on the 23rd day of April, 1891, dismissing its bill of complaint, does hereby appeal therefrom and from the whole thereof to the Supreme Court of the United States, and it prays that its appeal may be allowed and that a transcript of the record, pleadings, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court, and that said Supreme Court may proceed to hear the cause anew, and that the said decree of the circuit court may be reversed or such other decree made as to the said Supreme Court shall seem just.

E. N. DICKERSON,
DICKERSON & DICKERSON,
Solicitors for Complainant and Appellant.

Any supersedeas or other bond on appeal is hereby waived.
June 4th, 1891.

LIVINGSTON GIFFORD,
Solicitor for Defendants & Appellees.

3 The foregoing appeal is allowed this 5th day of June, 1891.

M. W. ACHESON,
Circuit Judge.

4 (*Stipulation. Filed April 1st*, 1891.)

United States Circuit Court, District of New Jersey. In Equity.

BATE REFRIGERATING COMPANY, Complainant,
against
DANIEL TOFFEY, GEORGE A. TOFFEY, and GEORGE C. TOFFEY, Defendants.

Concerning U. S. Letters Patent No. 197,314.

It is hereby stipulated in the above-entitled cause as follows:

First. That the bill of complaint herein be, and the same hereby is, amended *nunc pro tunc* as of the date of the filing of such original bill of complaint as follows:

By striking out the words "doing business in Jersey City, in the State of New Jersey," which appear in said original bill, and substituting therefor the following: "Doing business and residing at Jersey City, in the State of New Jersey."

By striking out the words and figures "that heretofore and before the twentieth day of November, A. D. 1877, John J. Bate, being then a citizen of the United States," which appear in said
5 original bill, and substituting therefor the following: "That heretofore and before the first day of December, A. D. 1876, John J. Bate, being then a citizen of the United States."

By striking out the words and figures "that the said John J. Bate, in due form of law, made application in writing to the Commissioner of Patents," which appear in said original bill, and substituting therefor the following: "That on the said first day of December, 1876, the said John J. Bate, in due form of law, made application in writing to the Commissioner of Patents."

By striking out the words and figures "that on the twentieth day of November, A. D. 1877, letters patent of the United States, bearing date on that day and numbered 197,314, were issued to the said John J. Bate according to law," which appear in said original bill, and substituting therefor the following: "That, after sundry necessary proceedings in the United States Patent Office, including an appeal to the examiners-in-chief from a decision of the primary examiner (the decision of said examiners-in-chief being filed March 24th, 1877), as well as a subsequent and contested interference in the said Patent Office between his said application and the patent of one Ezekiel S. Halsted (the decision in favor of said Bate in said interference being filed October 17th, 1877), the said John J. Bate was finally adjudged justly entitled to a patent under the law, and

that on the twentieth day of November, A. D. 1877, letters
6 patent of the United States, bearing date on that day and numbered 197,314, were issued to the said John J. Bate according to law."

By striking out the words "and severally" wherever they appear together in said original bill.

By striking out the words "with the consent or allowance of the said John J. Bate as the inventor and discoverer thereof," which appear in said original bill.

By inserting between the words "the invention or discovery aforesaid" and the words "a description whereof," which appear in said original bill, the following words: "Substantially as described and claimed in said application as originally filed."

Second. That the two pleas filed by the defendants herein on or about February 24th, 1886, setting up want of equitable jurisdiction because of the alleged expiration of prior English and Canadian patents for the same invention be, and the same hereby are, withdrawn from the case.

Third. That the defendants have leave to file and do file herewith an answer to the bill of complaint herein as amended.

Fourth. That the allegations of fact contained in said answer be taken and considered as true and as admitted for all the purposes of this suit.

7 Fifth. That each party hereto will speed the cause in every reasonable way, and each party hereto waives the recovery of costs in either court against the other.

Sixth. That the above-entitled cause be heard and argued upon the amended bill and answer above referred to at the March term, 1891, of the above-entitled court, all required notices and legal formalities with respect to putting the cause at issue and placing the same on the calendar for the March term, 1891, being hereby expressly waived and the clerk of the said court being hereby requested and authorized to place the said cause on the calendar for the said term.

E. N. DICKERSON,
DICKERSON & DICKERSON,
Sol'rs for Compl't.

PAUL H. BATE,
Counsel for Complainant.

LIVINGSTON GIFFORD,
Sol'r for Def'ts & of Counsel.

8 (*Order Filed nunc pro tunc as of April 1st*, 1891.)

United States Circuit Court, District of New Jersey. In Equity.

BATE REFRIGERATING COMPANY, Complainant, *vs.* DANIEL TOFFEY, GEORGE A. TOFFEY, and GEORGE C. TOFFEY, Defendants. } Concerning U. S. Letters Patent No. 197,314.

Upon reading the annexed stipulation between the parties hereto, filed herein April 1st, 1891, and on motion of the complainant, it is—

Ordered *nunc pro tunc* as of April 1st, 1891, as follows:

First. That the bill of complaint herein be, and the same hereby is, amended, as provided in said stipulation.

Second. That the two pleas filed herein by the defendants on or about Feb'y 24th, 1886, be, and the same are hereby, withdrawn from the case, as provided in said stipulation.

Third. That the defendants have leave to file an answer to the amended bill of complaint herein, as provided in said stipulation.

9 Fourth. That the allegations of fact contained in the defendants' answer to the amended bill of complaint herein be taken and considered as true and admitted for all the purposes of this suit, as provided in said stipulation.

Fifth. That the above-entitled cause be heard upon the amended bill and answer, as provided in said stipulation, at this present March term, 1891, of this court, and that the said cause be placed on the calendar for the said March term, 1891, of this court, provided that the said cause can be heard by his honor M. W. Acheson, circuit judge.

EDW. T. GREEN, *J.*

10 *Original Bill of Complaint. Filed May* 18, 1882.

Bill of complaint as amended. Filed April 1, 1891.

Circuit Court of the United States for the District of New Jersey.

THE BATE REFRIGERATING COMPANY, Complainant, *against* DANIEL TOFFEY, GEORGE A. TOFFEY, and GEORGE C. TOFFEY, Defendants. } In Equity.

To the honorable the judges of the circuit court of the United States for the district of New Jersey:

The Bate Refrigerating Company, a corporation organized under and by virtue of the laws of the State of New York, and citizens of said State, bring this its bill of complaint against Daniel Toffey,

George A. Toffey, and George C. Toffey, doing business and residing at Jersey City, in the State of New Jersey; and thereupon your orator complains and says—

That heretofore and before the first day of December, A. D. one thousand eight hundred and seventy-six, John J. Bate, being then a citizen of the United States, was the original, true, and first inventor or discoveror of a certain new and useful invention, towit, "an improvement in processes for preserving meats during transportation and storage," and that the said invention was not known or used by others before his invention or discovery thereof,
11 and was not at the time of the application for letters patent therefor in public use or on sale, contrary to the provisions of the statute in such case made and provided.

That on the said first day of December, 1876, the said John J. Bate in due form of law made application in writing to the Commissioner of Patents of the United States for the granting of letters patent for said invention, and paid into the Treasury of the United States the fees required by law, and then and there duly complied in all other respects with all the necessary conditions and requirements of the statutes of the United States in such case made and provided, prior to the granting of the letters patent herein mentioned.

That after sundry necessary proceedings in the United States Patent Office, including an appeal to the examiners-in-chief from a decision of the primary examiner (the decision of said examiners-in-chief being filed on March 24th, 1877), as well as a subsequent and contested interference in the said Patent Office between his said application and the patent of one Ezekiel S. Halsted (the decision in favor of said Bate in said interference being filed on October 17th, 1877), the said John J. Bate was finally adjudged justly entitled to a patent under the law; and that on the twentieth day of November, A. D. 1877, letters patent of the United States, bearing date on that day and numbered 197,314, were issued to said John J. Bate, according to law, whereby there was granted to him and his heirs, executors, administrators, or assigns, for the term
12 of seventeen years from the twentieth day of November, A. D. 1877, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the invention or discovery aforesaid, substantially as described and claimed in said application as originally filed, a description whereof was given in the words of the said John J. Bate in the schedule annexed to the said letters patent and making part of the same.

That the said letters patent were issued in the name of the United States of America, and were signed by the Secretary of the Interior, and were countersigned and sealed with the seal of the Patent Office by the Commissioner of Patents, and were numbered 197,314 as aforesaid, and were issued and delivered to the said John J. Bate, and that the said John J. Bate put the said invention into practical, effective, and extended use.

And your orator further shows that on the twenty-second day of November, A. D. 1877, by assignment in writing, duly signed, ac-

knowledged, and delivered, and recorded on the twenty-third day of November, A. D. 1877, on page 307, Liber D 22 of Transfers of Patents of the United States Patent Office, the said inventor and patentee, John J. Bate, assigned all his right, title, and interest in and to the said letters patent, the same being the full and entire right, title, and interest therein, to the herein-named Bate Refrigerating Company, as by the deed or instrument of the said assign-
13 ment, or a duly authenticated copy thereof, here in court to be produced (if required), will more fully appear; and your orator prays that the said letters patent and the schedule annexed thereto and forming part of the same may be deemed and taken as part of this bill of complaint, and to the original of which, or duly authenticated copies thereof, now in your orator's possession and ready to be produced (if required), your orator prays leave to refer.

And your orator further shows that your orator, the said Bate Refrigerating Company, has ever since the date of the said assignment been and now is entitled to all the rights, interests, and privileges thereby secured unto it in and to the said invention or discovery in the said letters patent particularly set forth, and is now and ever since the date of the said assignment has been entitled to the exclusive use of the said invention and improvement.

And your orator further shows that on the thirtieth day of November, A. D. 1877, a final decree was issued by the United States circuit court for the second circuit and southern district of New York, in the suit (in equity) of the herein-named Bate Refrigerating Company against Charles Snowden and Patrick McConvill, comprising the firm of Snowden & McConvill, in which it was ordered, adjudged, and decreed that the aforesaid letters patent are good and valid; and your orator further says that in pursuance of said decree a perpetual injunction was issued in said suit, perpetually
14 enjoining and restraining the said Charles Snowden and Patrick McConvill, their attorneys, clerks, agents, or workmen, from using the process set forth in said letters patent, or any other process substantially the same.

And your orator further shows that on the fourteenth day of November, A. D. 1881, an interlocutory decree was issued by the United States circuit court for the district of New Jersey, in the suit in equity, of the herein-named Bate Refrigerating Company against Benjamin W. Gillett, Morillo H. Gillett, and David F. Sherman, impleaded with the Cunard Steamship Company, in which it was ordered, adjudged, and decreed that the aforesaid letters patent are good and valid; and your orator further says that in pursuance of said interlocutory decree a perpetual injunction was issued in said suit and served upon the defendants therein.

And your orator further shows unto your honors that the said invention or discovery so patented as aforesaid unto the said John J. Bate is of very great utility, and that the same has been extensively introduced into public use, and that the public have generally acquiesced in your orator's exclusive right to the same, and your orator would, but for the wrongful acts and doings of the said defendants and others acting in concert with them, have made large

gains, profits, and advantages from the practice, use, and sale of the said invention.

And your orator would, but for the wrongful acts and doings of the said defendants, Daniel Toffey, George A. Toffey, and
15 George C. Toffey and others acting in concert with them, now be enabled to use the said improvement in processes for preserving meats during transportation and storage, to which your orator is entitled to the exclusive right as aforesaid, with profit and advantage, but that by the said wrongful acts and doing of said defendants it is now prevented and hindered from so doing.

And your orator further shows unto your honors, upon information and belief, that the said defendants, Daniel Toffey, George A. Toffey, and George C. Toffey, did jointly use the process patented as herein set forth for their own gain and profit, well knowing the premises and the rights and privileges secured unto your orator, and, in order to deprive your orator of the profits, benefits, and advantages which might and otherwise would have accrued to your orator at Jersey City, in the district of New Jersey, and elsewhere in the United States, and without the license and permission of your orator, have since the twentieth day of November, A. D. 1877, at Jersey City aforesaid and elsewhere within the United States, jointly, unlawfully, and wrongfully made or practised and caused to be made or practised, sold or caused to be sold, used or caused to be used, the said process substantially as described and set forth in the herein-specified letters patent No. 197,314, issued to John J. Bate as aforesaid, and the exclusive right to which is secured to your orator, as hereinbefore set forth, and which said unlawful making, prac-
16 tising, use, and sale by the defendants as aforesaid is a violation and infringement of your orator's exclusive rights and privileges, and that the said defendants have derived and received and are still deriving and receiving from such unlawful use and practice great gains and profits, but to what amount your orator is ignorant and cannot set forth, but your orator prays that the defendants may be required to make a disclosure of all such gains and profits.

And your orator in like manner avers that the defendants, though requested to desist from such unlawful use and practice and to pay to your orator such gains and profits as the defendants have actually made, refuse so to do, by means whereof your orator is and has been greatly injured, and is now prevented from putting the said invention or discovery into fully remunerative operation, and is deprived and prevented from receiving the gains and profits to which it is lawfully entitled from the exclusive rights and privileges so granted and secured to it as aforesaid and which it would have derived and acquired and would now derive and acquire but for the said wrongful acts of the said defendants.

And your orator prays that the said defendants may be compelled by a decree of this honorable court to account for and pay over unto your orator all such gains and profits as have accrued or arisen to or been earned or received by the said defendants and all
17 such gains and profits as your orator would have received

but for the said wrongful acts and doings of the said defendants and all damages your orator has sustained thereby, and that this honorable court will assess the same or cause the same to be assessed under its direction and increase the same in its discretion, as provided by law.

And that the said defendants, their associates, attorneys, solicitors, clerks, servants, agents, and workmen, may be perpetually enjoined and restrained by the decree of this court from directly or indirectly making or practising or causing to be made or practised, using or causing to be used or vending to others to be used in any manner any process containing or embodying the said invention set forth and described in the said letters patent as issued aforesaid and from infringing upon or violating the said letters patent by the use or sale of the said process in any way whatsoever.

And that the said defendants may be decreed to pay the costs, charges, and disbursements of this suit, and that your orator may have such other relief as the equity of the case may require and as to your honors may seem meet.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may full, true, direct, and perfect answer make, according to the best of their or their clerks', agents', or workmen's knowl-
18 edge, remembrance, information, and belief, to the several matters hereinbefore averred and set forth as fully and particularly as if the same were here repeated paragraph by paragraph and they were thereto severally and specifically interrogated, may it please your honors to grant to your orator a writ of *subpœna and respondendum*, issuing out of and under the seal of this honorable court, directed to the said defendants, Daniel Toffey, George A. Toffey, and George C. Toffey, commanding them to be and appear and make answer to this bill of complaint and to perform and abide by such order and decree herein as to this court may seem required by the principles of equity and good conscience.

May it please your honors to grant to your orator a provisional or preliminary injunction, issuing out of and under the seal of this honorable court, enjoining and restraining the defendants, their associates, attorneys, solicitors, clerks, servants, workmen, and agents, to the same purport, tenor, and effect as hereinbefore prayed for in regard to the said perpetual injunction.

And your orator will ever pray, &c.

DICKERSON & DICKERSON,
Complainant's Solicitors and of Counsel.

UNITED STATES OF AMERICA,
City, County, and State of New York, } *ss:*

On this twenty-sixth day of April, 1882, before me came
19 Paul H. Bate, to me personally known, who, being duly sworn, did depose and say that he is secretary of The Bate Refrigerating Company, complainant in the foregoing bill of complaint named, and that he has read the said bill subscribed by him and knows the contents thereof, and that the same is true of his own

knowledge except as to the matters which are therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

PAUL H. BATE.

Sworn to before me this 26th day of April, A. D. 1882.
GEO. H. EVANS (11),
Notary Public, New York Co.

20 (*Defendants' Answer. Filed April 1st*, 1891.)

Circuit Court of the United States, District of New Jersey. In Equity.

BATE REFRIGERATING COMPANY, Complainant, *against* DANIEL TOFFEY, GEORGE A. TOFFEY, and GEORGE C. TOFFEY, Defendants. } Concerning U. S. Letters Patent No. 197,314.

The answer of Daniel Toffey and George C. Toffey, defendants, to the amended bill of complaint of The Bate Refrigerating Company, complainant, George A. Toffey, the other defendant, having become deceased since the filing of the original bill of complaint herein.

These defendants, for the purposes of this action, hereby admit the truth of all of the allegations and statements in said amended bill of complaint contained, but deny, for reasons hereinafter set forth, that the complainant is entitled to the relief therein prayed for.

And these defendants, further answering, admit having jointly infringed the said letters patent in suit since the 22nd day of November, 1877, by making and using the process for preserving meats therein described and claimed, as charged in the said amended
21 bill of complaint, but allege that they have liquidated and paid the money demand or claim made by the said complainant against them because of such infringement up to and including the 29th day of January, 1891.

And these defendants, further answering, say that on the 29th day of January, 1877, and prior to the date when the patent No. 197,314, on which this suit is brought, was granted, but subsequent to the date on which the application for the said patent No. 197,314 was filed in the United States Patent Office, the alleged invention which is the subject of the said patent No. 197,314 had been patented or caused to be patented by the same John J. Bate, to whom the said patent No. 197,314 was granted, in a foreign country, to wit, in the United Kingdom of Great Britain and Ireland, the Channel islands, and the Isle of Man, by letters patent of said United Kingdom No. 382, granted and issued to William Robert Lake on a communication sent to him from abroad by said John J. Bate, under date of Jan'y 29, 1877, for a term of fourteen years therefrom, the said British patent No. 382 being sealed July 13, 1877, and the com-

pleted specification filed July 26th, 1877, as by said British patent or a duly authenticated copy thereof, ready in court to be produced, will fully and at large appear.

And these defendants, further answering, say that the alleged invention for which the said United States letters patent No.
22 197,314 was granted, being as aforesaid previously patented or caused to be patented by the said John J. Bate in the said United Kingdom of Great Britain and Ireland, the Channel islands, and the Isle of Man, the said patent No. 197,314 did expire at the same time with the said patent No. 382 of the said United Kingdom, to wit, on the 29th day of January, 1891, at the end of the term of fourteen years for which the said patent No. 382 was granted.

Wherefore these defendants say that the said complainant is not entitled to any injunction or other equitable relief or any relief in this court prayed for in said bill.

And these defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

DANIEL TOFFEY,
GEORGE C. TOFFEY,
By LIVINGSTON GIFFORD,
Def'ts' Sol'r.

23 In the United States Circuit Court, District of New Jersey.

BATE REFRIGERATING COMPANY *v.* DANIEL TOFFEY *et al.* } In Equity. Sur-amended Bill, Answer, and Stipulation.

Per Curiam:

In view of the rulings in the case of Bate Refrigerating Company *v.* Gillett, 13 Fed. R., 553 (Nixon, J.), and Same *v.* Same, 31 Fed. R., 809 (Bradley, J.), we regard the question here involved as no longer open in this court, and, following those rulings, we must dismiss this bill.

24 At a stated term of the circuit court of the United States of America for the district of New Jersey, in the third circuit, held at the city of Trenton on the 23rd day of April, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The Hon. Marcus W. Acheson, circuit judge.

THE BATE REFRIGERATING COMPANY, Complainant,
against
DANIEL TOFFEY, GEORGE A. TOFFEY, and GEORGE C. TOFFEY, Defendants.

And now, April 23, 1891, this cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is—

Found and adjudged that the complainant's letters patent expired on the 29th day of January, 1891; and it is—

Ordered, adjudged, and decreed that the bill of complaint herein be, and the same hereby is, dismissed.

BY THE COURT.

25 Supreme Court of the United States.

BATE REFRIGERATING COMPANY, Appellant,
vs.
DANIEL TOFFEY, GEORGE C. TOFFEY, and GEORGE A. TOFFEY, Appellees.
} Assignment of Errors.

Afterwards, to wit, on Monday, the 29th day of June, 1891, before the justices of the Supreme Court of the United States, comes the said Bate Refrigerating Company, appellant, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1. That the circuit court erred in holding that the complainant's letters patent expired on the 29th day of January, 1891.

2. That the circuit court erred in dismissing the complainant's bill of complaint and in not granting a decree to complainant for an injunction and other relief as prayed for in said bill.

And the said appellant prays that the aforesaid final decree of the circuit court for the errors aforesaid may be reversed, annulled, and altogether held for nothing, and that it, the said appellant, may be granted the relief by it prayed for.

PAUL H. BATE,
Counsel for Appellant.

DICKERSON & DICKERSON,
Sol'rs for Complainant.

26 Due and timely service of the foregoing assignment of errors and of the notice of the filing of the same is hereby admitted.

N. Y., June 4th, 1891.

LIVINGSTON GIFFORD,
Sol'r for Defendants and Counsel for Appellees.

27 Original.

United States Circuit Court, District of New Jersey. In Equity.

BATE REFRIGERATING COMPANY, Complainant,
vs.
DANIEL TOFFEY, GEORGE A. TOFFEY, and GEORGE C. TOFFEY, Defendants.
} Concerning U. S. Letters Patent No. 197,314.

It is hereby stipulated and agreed by the solicitors for the parties to this suit that the foregoing, together with the proper certification and any necessary formal papers, constitute the record herein to be sent by the clerk of this court to the Supreme Court of the United States on appeal.

New York, June 8th, 1891.

E. N. DICKERSON,
DICKERSON & DICKERSON,
Solicitors for Complainant.
LIVINGSTON GIFFORD,
Solicitor for Defendants.

28 UNITED STATES OF AMERICA, *District of New Jersey,* } *ss:*

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, do hereby certify that the foregoing is a full, true, and complete transcript of the record in the cause of Bate Refrigerating Company against Daniel Toffey, George C. Toffey, and George A. Toffey as the same appears on file and of record in my office.

The Seal of the U. S. Circuit Court, Dist. of New Jersey.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Trenton, in said district, this the twenty-sixth day of June, A. D. 1891.

S. D. OLIPHANT, *Clerk.*

Endorsed on cover: New Jersey C. C. U. S. No. 1233. The Bate Refrigerating Company, appellant, *vs.* Daniel Toffey, George C. Toffey, and George A. Toffey. Filed June 29, 1891.

BY THE COURT.